

# FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR EAGLE'S BLUFF

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# FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

EAGLE'S BLUFF

THIS FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for Eagle's Bluff Community Association, Inc., is made this day \_\_\_\_ of May 2014, by Pars at the Lake, L.L.C. f/k/a Grace Creek Development, L.P., successor to Lake Palestine Associates, L.P., a Texas limited liability company (the "Declarant"). Declarant is the owner of the real property described in Exhibit "A" which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Properties.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used, and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Eagle's Bluff Community Association, Inc., as filed with the Secretary of State of the State of Texas.

1.3. "Association": Eagle's Bluff Community Association, Inc., a Texas non-profit corporation, its successors or assigns.

1.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.3.

1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Texas corporate law.

1.6. "Builder": Any Person which purchases one (1) or more Units for the purpose of constructing improvements for later sale to consumers or purchases one (1) or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7. "Bylaws": The Bylaws of Eagle's Bluff Community Association, Inc.

1.8. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in the Bylaws.

1.9. "Common Area": All real and personal property which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.10. "Common Expenses": The actual and estimated expenses incurred or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Owners representing a majority of the total Class "A" vote of the Association.

1.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors, the New Construction Committee, and Modifications Committee.

1.12. "Country Club": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, made up of the golf course, clubhouse, and other facilities constituting the Eagle's Bluff Country Club, which is located on the land described on Exhibit "B" attached hereto.

1.13. "Declarant": Pars at the Lake, L.L.C. f/k/a Grace Creek Development, L.P., successor to Lake Palestine Associates, L.P., a Texas limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant, provided there shall be only one Declarant at



any time.

1.14. "Master Plat": The Plat plan for the development of the Eagle's Bluff community, as it may be amended from time to time, which plat includes the property described on Exhibit "A" and recorded in Volume 1440 Page 44 of the Cherokee County Land Records.

1.15. "Member": A Person entitled to membership in the Association.

1.16. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.17. "Mortgagee": A beneficiary or holder of a Mortgage.

1.18. "Mortgagor": Any Person who gives a Mortgage.

1.20. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.21. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.22. "Properties": The real property described on Exhibit "A" together with such additional property as is subjected to this Declaration in accordance with Article IX.

1.23. "Public Records": The Public Real Estate Records of Cherokee County, Texas.

1.24. "Special Assessment": Assessments levied in accordance with Section 10.6.

1.25. "Specific Assessment": Assessments levied in accordance with Section 10.7.

1.26. "Supplemental Declaration": An instrument filed in the public records pursuant to Article IX which subjects additional property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.27. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, or property dedicated to the public. Following the date that this document is recorded with the real property records of Cherokee County, any owner that acquires multiple lots shall be entitled to one (1) vote

per lot acquired, along with one (1) assessment per lot acquired, regardless of any subsequent replatting. In the case of a parcel of vacant land or land on which improvements are "under construction," the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plat or the site plan approved by Declarant, whichever is more recent, until such time as a revised subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph. The phrase "under construction," when used in this context, shall refer to the time period prior to the issuance of a certificate of occupancy for the structure comprising the residential single-family dwelling.

## ARTICLE II PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use future recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association after notice pursuant to the Bylaws. In the event any recreational facilities are included as a Common Area of Responsibility in the future, said rights listed in this article shall extend to those facilities without necessity of amendment;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational facilities, including



but not limited to future facilities, situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board; and

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend their right of use and enjoyment to the members of their family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases their Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. Country Club Membership. All Owners are hereby advised that they are required to pay the initiation fee and monthly dues necessary for social membership in the Eagle's Bluff Country Club, and may, at each Owner's discretion, pay any additional sums required to upgrade their membership to a golf membership. By its purchase of a Unit, each Owner acknowledges (i) that non-Owners may also become social or golf members of the Country Club at the discretion of the governing body of the Country Club and (ii) that a failure to pay any amount owed to the Country Club may, at the election of Declarant, (A) constitute a lien against the non-paying Owner's Unit and be subject to the collection remedies set forth in Section 10.8 herein, and (B) result in a loss of the non-paying Owner's privileges to use the Country Club facilities, even though such Owner shall continue to be obligated to pay all subsequent assessments to the association.

Access to and use of the Country Club is strictly subject to the rules and procedures of the owner of the Country Club, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit without paying the required initiation fee and monthly dues.

All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Country Club. No purported representation or warranty, written or oral, in regard to the Country Club shall be effective unless set forth in an amendment to this Declaration executed by the Declarant and the owner of the Country Club. After notice of the offer for sale, the Association shall have a first right to match any sales price offered to Declarant for the Country Club. The Association shall have thirty (30) days from the notice date of the written offer for the sale of County Club to match the offer in price and payment terms. If Association fails to provide written notice of a matching offer within thirty (30) days' notice, it shall be deemed a denial of offer to purchase the Country Club. If the Association matches the offer, the Association shall have forty-five (45) days from the date of acceptance to present the Declarant with written proof that the Association is a viable purchaser and can maintain the Country Club to similar business standards. Following presentation of the Association's financial viability, the Association shall have twenty (20) days in order to close the purchase of the Country Club.

The owner or operator of the Country Club may at any time cease operating such facilities

or change ownership or operation by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of the Country Club or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Country Club, or (c) the conveyance of a Country Club to one (1) or more affiliates, shareholders, employees, or independent contractors of the Declarant.

Other than as set forth above in this Section 2.2, rights to use the Country Club may be limited or restricted and will be granted only to such persons, and on such terms and conditions, as may be determined by the owners and operators of the Country Club. Such owners and operators shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Country Club and to terminate use rights altogether, provided that Owners who have complied with their obligations hereunder shall not be adversely affected by such actions.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles, and the laws of the State of Texas.

3.2. Membership. Every Owner shall be a member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the Bylaws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit in which they hold



the interest required for membership under Section 3.2 provided there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 10.12.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the Bylaws, are specified elsewhere in this Declaration and the Bylaws. Any right of the Declarant to approve or disapprove of actions by the Association shall be applicable solely to any units owned by Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the Bylaws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

(i) three (3) years after expiration of the Class "B" Control Period if the Class "B" Control Period terminates prior to when 100% of the maximum number of Units permitted by the Master Plat for the property described on Exhibit "A" have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;

(ii) when 100% of the maximum number of Units permitted by the Master Plat for the property described on Exhibit "A" have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders; or

(iii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Owner of such Unit.

In any situation where a Member is entitled personally to exercise the vote for their Unit and there is more than one (1) Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it in a contradictory or unclear manner.

#### ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this

Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant or its designees may convey to the Association improved or unimproved real estate located within the properties described in Exhibit "A," personal property and leasehold and other property interests, subject to approval of the Board. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to (1) any restrictions set forth in the deed, (2) the governing documents of the Association, or (3) other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and use of any recreational facilities, including any facilities constructed and/or acquired in the future, within the Common Area. In addition, the Association, through the Board, in accordance with the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration or the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including without limitation attorney's fees and court costs, reasonably incurred in such action from the violating Owner.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the appropriate governmental entity to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights, Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. The Association, through its Board of Directors, may designate sites within the Properties for fire, police, water, other utility facilities, parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site.



4.6. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he/she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association except to the extent that such officers or directors may also be Members of the Association. The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Cherokee County, Texas, or to any other local, state, or federal governmental entity.

4.8. Monitoring Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring services within the Properties. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system, or other monitoring system or measure cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants, that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers of safety and that each Person using the Properties assumes all risks of personal injury, death, and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Relations with Adjacent Properties. Adjacent to or in the vicinity of the Properties are independent commercial and/or residential areas and the Country Club, each of which may or will share with the Association and its Members the use of Common Areas, real property and facilities, including, but not limited to, roads utilized by the associated golf course. The Association may enter into agreements, contracts or covenants to share costs with all or any of the owners of such adjacent or nearby property which allocate access, maintenance responsibilities, expenses, and other matters between the Association and such property owners.

## ARTICLE V MAINTENANCE

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(a) All landscaping and other flora, parks, the fountain, the pond structures, and improvements, including any private streets, bike pathways/trails, situated upon the Common Area;

(b) Landscaping within public rights-of-way within or abutting the Properties;

(c) Such portions of any additional property, including, without limitation, the trail system serving as an amenity to the Properties and property subsequently deeded, transferred, assigned, or gifted to the Association, included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(d) All ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, conduits, and similar equipment installed therein or used in connection therewith; and

(e) Any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members with such property and facilities to be identified by written notice from the Declarant to the Association, and accepted and approved by the Board of Directors, and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibit "A" of this Declaration.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be



allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2. Owner's Responsibility. Each Owner shall maintain their Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform their maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association and/or Owner shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its own maintenance responsibilities.

5.4. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damages is not covered by insurance and repaired out of the proceeds of insurance, any Owner who is served by the structure may restore it. If other Owners thereafter are served by the structure, they shall contribute to the restoration cost in equal proportions. However, such contributions will not prejudice the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes. Any dispute arising/concerning a party structure shall be handled in accordance with the provisions of Article XVII.

## ARTICLE VI INSURANCE AND CASUALTY LOSSES

### 6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis, or comparable coverage by whatever name denominated, for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(iv) Directors and officers liability coverage, provided; however, the Association shall not be required to purchase such coverage if the directors and officers are otherwise covered by or through policies procured by the Declarant or others;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the annual Base Assessments on all Units plus reserves



on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. The Association shall have no insurance responsibility for any portion of the Country Club.

(b) Policy Requirements. After expiration of the Class "B" Control Period, the Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Cherokee County, Texas area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 10.7.

All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Declarant, the Association, and its Members;

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement, if the policy contains a co-

insurance clause.

In addition, the Board shall be required to use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) A waiver of subrogation as to any claims against the Declarant, the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) An endorsement requiring at least thirty (30) days' prior written notice to the Declarant, the Association and their lenders, if any, of any cancellation, substantial modification, or non-renewal;

(vi) A cross liability provision; and

(vii) A provision vesting in the Board exclusive authority to adjust losses provided; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. "Repair or reconstruction," as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Owners representing at least 67% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within ninety (90) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 90-day period, then the



period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, including, but not limited to, payment to any Mortgagee of the Common Area, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on their Unit, less a reasonable deductible, and liability insurance.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising their Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

## **ARTICLE VII**

### **NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## ARTICLE VIII CONDEMNATION

If any part of the Common Area shall be taken, or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibit "A", by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibit "A" of this Declaration, and Owners representing at least 67% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine, including utilization for reserve fund, to defray other common expenses, management or professional fees, or payment of governmental dues, penalties, and payments.

## ARTICLE IX ANNEXATION AND WITHDRAWAL OF PROPERTY

9.1. Annexation Without Approval of Membership. Until December 31, 2028, the Declarant may from time to time unilaterally, subject to the provisions of this Declaration, annex any real property immediately adjacent to and contiguous with the Properties, so long as the real property is not subject to any unknown or undisclosed encumbrance, including easements, covenants, restrictions, and/or collateralized interests, nor subject to any environmental action. Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the Public Records. Such Supplemental Declaration shall not require the consent of Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing of record of such Supplemental Declaration



unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any additional property.

9.2. Annexation With Approval of Membership. The Association may annex real property located adjacent to and contiguous with the Properties after December 31, 2028, with the consent of the owner of such property, the affirmative vote of Owners representing at least 67% of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.3. Withdrawal of Property. So long as it has a right to annex additional property pursuant to this Article IX, the Declarant reserves the right to request an amendment to this Declaration for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association's reasonable written consent shall be required prior to such withdrawal.

9.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, if other than the Declarant. Any annexed property serving any residential purpose shall be subject to the entire set of governing documents for the Association on file with the real property records of the county where the property exists, including any amendments thereto. Any annexed property not of a residential purpose shall also be subject to the governing documents referenced in the foregoing, subject to any exception, variance, or modification of the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A."

## ARTICLE X ASSESSMENTS

10.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units, (b) Special Assessments as described in Section 10.6, and (c) Specific Assessments as described in Section 10.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest, at a rate not to exceed the highest rate allowed by applicable law, computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's costs, and fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, other than a transfer by Mortgage to a Mortgagee, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit pursuant to the power of sale or foreclosure rights contained in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Board shall, upon request, furnish to any contract purchaser of a Unit or any Owner liable for any type of assessment a certificate in writing signed by an authorized agent of the Association, including but not limited to an officer or management agent, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first (1<sup>st</sup>) day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on their Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Board, on its own or through a management company and/or agent, shall prepare and record a Payment Plan Policy in compliance with state, county, and municipal statute with same being filed in the real property records office of any county where a portion of the Association exists.

10.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units, notwithstanding the commencement date for assessments set forth in Section 10.9, or to pay the



difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. To the extent that Declarant contributes payments beyond that which would be required if Declarant elected to pay regular assessments, such amounts shall be treated as a loan to the Association. The terms of such loan shall include interest at the rate of the Wall Street Journal Prime Rate per annum, and payment in full shall be due upon demand at any time after one year following the termination of the Class "B" Control Period. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

10.3. Computation of Base Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.5.

The Base Assessment shall be levied equally against all Units; provided, however, commencing as described in Section 10.9, for a period of one (1) year, Units owned by Builders shall be assessed at one-fourth (1/4) of the Base Assessment rate levied on Units not owned by Builders. Following the expiration of said one (1) year period, Units owned by Builders shall be assessed at the full Base Assessment rate established for all other Units. The number of Units owned by a Builder on a parcel of vacant land or land on which improvements are under construction shall be determined by the maximum allowable density of Units designated for such parcel on the recorded agreed plat of the Association, until such time as a subdivision plat is filed for the parcel. After a subdivision plat is filed for the parcel, the number of Units owned by the Builder shall be based upon such recorded agreed plat.

The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.9 on the first (1<sup>st</sup>) day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, in addition to any amounts paid by Declarant under Section 10.2, which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least 67% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

#### 10.4. Intentionally Deleted.

10.5. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget with respect to amount and timing by annual Base Assessments over the budget period.

10.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment shall be levied against the entire membership, and upon all units shown on the recorded agreed plat of the Association. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board.

10.7. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit, (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests, or (c) that are expressly permitted by the terms of the Declaration. The Association may also levy a Specific Assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, other covenants, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing.



10.8. Lien for Assessments. The Declarant and/or Association does hereby establish, reserve, create and subject each Unit to a perfected contractual lien in favor of the Association to secure payment of delinquent assessments, as well as interest, late charges, subject to the limitations of Texas law, and costs of collection, including attorneys fees and costs. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record, meaning any recorded Mortgage with first priority over other Mortgages, made in good faith and for value. Declarant hereby assigns such lien to secure payment of delinquent assessments to the Association without recourse, and reserves for the Declarant the right to pursue all statutory and contractual liens solely for non-payment of Club Membership fees. The lien shall be self-operative, and shall continue in inchoate form without being reserved or referenced in any deed or other documents and without any other action required. Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure in accordance with Texas law. Subject to approval by the Class "B" Member, the Association may assign such lien rights as to any or all Units to a lender as security for any loan made to the Association.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law, in like manner of any deed of trust on real property.

Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law.

At any foreclosure proceeding, any Person, including but not limited to Declarant, the Association, and any Owner shall have the right to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such

assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 10.9, including such acquirer, its successors and assigns.

10.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit owned by Persons other than Builders on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The obligation of a builder to pay assessments as to each Unit it owns shall commence on the first (1<sup>st</sup>) day of the seventh (7<sup>th</sup>) month following the conveyance of such Unit by the Declarant to the Builder. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

10.10. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.11. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid at closing and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

10.12. Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

## ARTICLE XI

### ARCHITECTURAL STANDARDS



11.1. General. No structure, including, but not limited to, buildings, signs, walls, and mailboxes, shall be placed, erected, or installed upon any Unit, and no improvements, including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials, shall take place except in compliance with this Article, and approval of the appropriate committee under Section 11.2. Notwithstanding this, the Board of Directors may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Further, the Declarant, in its discretion, may exempt certain designees, including but not limited to, Builders, from any or all of the requirements of this Article solely for original construction upon property acquired by purchase from Declarant as described in Exhibit "A," provided such designees are contractually obligated to comply with design review restrictions imposed by Declarant.

Any Owner may remodel, paint or redecorate the interior of structure(s) of a Unit without approval provided such improvements are not visible from outside such structure(s). Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications construction and modifications under this Article shall be handled by the committees as described in subsections (a) and (b) below. The members of committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Declarant or the Board. The Board of Directors, New Construction Committee, or Modifications Committee acting with authority to approve and enforce the Design Guidelines, may establish and charge a reasonable fee for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) New Construction Committee. The New Construction Committee ("NCC") shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the NCC, who shall be responsible to the Board of

Directors and the Declarant and shall serve as the Association's agents at the discretion of the Board of Directors and the Declarant. There shall be no surrender or assignment of the right of the Declarant to appoint the members of the NCC prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the NCC shall become the province of the Association and the Board may, at its option, appoint the members of the NCC, who shall thereafter serve and may be removed in the Board's discretion. Declarant may utilize the NCC to administer design review restrictions imposed by Declarant upon those Persons who have been designated by it as being exempt from the requirements of this Article.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee ("MC") to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space.

### 11.3. Guidelines and Procedures.

(a) The Board of Directors, NCC, and MC shall accept the initial design development guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Properties. The Board of Directors, NCC, and MC shall be responsible for reviewing plans in accordance with the Design Guidelines. The Board of Directors shall be the deciding authority for resolving any questions the NCC or MC may have as to the interpretation or application of the Design Guidelines.

Each Owner acknowledges that the Design Guidelines may be amended and that, for so long as it has the right to appoint the members of the NCC, the Declarant shall have sole and full authority to amend the Design Guidelines in its discretion. Thereafter, Board of Directors, NCC, or MC shall have amendment authority for the Design Guidelines including the right to develop modification guidelines for existing structure exterior improvements. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The Design Guidelines shall be made available to Owners and Builders who seek to engage in development or construction within the Properties and, subject to Declarant's right to exempt certain designees from the requirements of the Article, all such Persons shall conduct their activities in accordance with such Design Guidelines. The Design Guidelines shall be recorded in the Public Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.



With regard to modifications, the Board of Directors or MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed modifications and improvements shall be submitted to the Board of Directors or MC for review and approval, or disapproval. In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the Board of Directors or MC may consider the Design Guidelines, quality of design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the Board of Directors or MC fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved as submitted. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Board of Directors or MC pursuant to Section 11.5. Any approved application for new construction must be completed within one (1) year of the approval date. Any application for modification of an existing structure must be completed within six (6) months of the approval date.

11.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, are site specific unless otherwise noted, and shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.5. Variance. The Board of Directors or NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the Board or NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

11.6. Limitation of Liability. Neither the Declarant, Board of Directors, NCC, nor MC shall be liable to anyone submitting plans for approval in accordance herewith or to any other Person for damages, whether direct, indirect, consequential, or otherwise, arising out of or in connection with: (a) the approval or disapproval or failure to approve or disapprove any such plans, (b) enforcement or failure to enforce any site maintenance or other requirements hereof, (c)

the approval or disapproval of, or failure to approve or disapprove, any architectural, landscaping, development or other plans for improvements to any property adjacent to, or situated on or in the proximity of the Properties, (d) the development or construction of, or the failure to develop or construct, any improvements, including landscaping, on lands adjacent to or in the proximity of the Properties, or (e) defects, whether latent or otherwise, in such plans. Anyone submitting plans for approval agrees not to seek any such damages against the Declarant, Board of Directors, NCC, or MC. In addition, each Owner shall release and hold harmless the Declarant, Board of Directors, NCC, or MC and the members thereof from any and all liability, including attorneys' fees and court costs actually incurred, regardless of whether suit is brought or any appeal is taken therefrom, arising out of any approval given or denied by the Board of Directors, NCC, or MC under this Article.

Review and approval of any application pursuant to this Article is made on the basis of the Design Guidelines and aesthetic considerations and neither the Board of Directors, NCC, nor MC shall bear any responsibility for ensuring the value of a Unit, or the structural integrity, workmanship, quality or soundness of approved construction or modifications, nor for ensuring compliance with building codes, engineering and architectural standards, and other governmental requirements. Each Owner acknowledges that the approval of any application pursuant to this Article does not constitute an assurance or guarantee that the approved improvements are safe or fit for habitation. Neither the Declarant, the Association, the Board of Directors, NCC, MC, nor any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

11.7. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, Board of Directors or its designees, with the consent of the Declarant for so long as Declarant owns any property described on Exhibit "A" for development as part of the Properties, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, which may include monetary fines imposed by the Board of Directors, NCC, or MC together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines, in addition to the fees, costs, and fines provided in the preceding paragraph, may be excluded by the Board of Directors from the Properties. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Declarant or the Association, with the consent of the Declarant for so long as it owns any property described on Exhibit "A," shall have the authority



and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board of Directors, NCC, or MC.

## ARTICLE XII USE RESTRICTIONS AND RULES

12.1. Plan of Development: Applicability: Effect. The Properties are subject to the land development, architectural, and design provisions set forth in Article XI, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are attached at Exhibit "C" to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on Exhibit "C." The Board shall send notice to all Owners concerning any such proposed action at least ten (10) and no more than sixty (60) business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Owners representing at least 67% of the total Class "A" votes and by the Class "B" Member, if any.

(b) Alternatively, the Owners, at a meeting duly called for such purpose as provided in the ByLaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Owners representing at least 67% of the total Class "A" votes and the approval of the Class "B" Member, if any.

(c) At least thirty (30) days prior to the effective date of any action taken under

subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

12.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of their Unit can be affected and that the Use Restrictions and Rules may change from time to time.

12.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C" neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside or outside of structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions on displays visible from the outdoors for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, such as utilizing the dwelling as a business, daycare, hospice center, and/or consignment shop, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance, or that is a private and/or public nuisance as such terms are defined by a Texas court.



(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit, provided the Association or the Board may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

(g) Reasonable Rights to Develop. No rule or action by any Owner, the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(h) Intentionally Deleted.

The limitations in this Section 12.4 shall apply to rules only, they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

### ARTICLE XIII EASEMENTS

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and the Country Club property due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon, in accordance with the terms of these restrictions, to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, the Association, and the designees of each, which may include, without limitation, Cherokee County, Texas and any utility,

access, and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar monitoring systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded agreed plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, sanitary sewer provider, electric company, and natural gas supplier ingress and egress easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, storage tanks, pumps, meters and boxes. However, the exercise of this easement shall not extend to permitting the removal, damage, or destruction of any improvements not located on utilities easements, or entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board of Directors or Declarant.

13.3. Easements for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility, (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water, and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units, but not the dwellings thereon, adjacent to or within fifty (50) feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties, (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility, (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands, and (d) enter upon and across such portions of the Properties



for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Any lakes or wetlands on the Properties are designed as water management areas and are not designed as aesthetic features. Due to fluctuations in water elevations within the immediate area, the water level of lakes, creeks, and streams will rise and fall. Declarant has no control over such elevations. Therefore, each Owner releases the Declarant, the local city and municipality, and their affiliates, successors and assigns from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including attorneys' fees and costs and appellate fees and costs, related to or arising out of the storm drain system and water elevations, including the absence of any water in the lakes, creeks or streams. Neither the Association nor any Owner shall alter, modify, expand or fill any lakes or wetlands located on or in the vicinity of the Properties, without the prior written approval of the Declarant, so long as Declarant owns any property described in Exhibit "A" for development as part of the Properties, and such local, state and federal authorities as may have relevant jurisdiction over such matters.

13.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property annexed pursuant to Article IX, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property; however, Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of its development uses. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such Property.

13.5. Easements for the Country Club.

(a) All Units and the Common Area are burdened with an easement in favor of Declarant and the owner(s) and operators of the Country Club, and their respective successors, assigns and designees, permitting the doing of every act reasonably necessary or convenient to the establishment, operation, maintenance and repair of a golf course lying near or adjacent to the Properties and such acts as are commonly associated with the playing of golf.

Such easement shall include, but not be limited to, allowing the flight of golf balls over and above the Properties, the use of necessary and usual equipment on the golf course, the usual and common noise level created by the playing of the game of golf, and permitting golf balls unintentionally to come upon such Common Area or Units and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of a Unit to

retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association or its Members, in their capacity as such, the owner(s) of the Country Club or their successors, successors-in-title, or assigns; any successor Declarant; any Builder or contractor, in their capacities as such; any officer, director or partner of any of the foregoing, or any officer or director of any partner; or any organizer or sponsor of any tournament or special event.

(b) The owner(s) of the Country Club, their respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair, and replacement of the Country Club.

(c) The Properties immediately adjacent to the Country Club are hereby burdened with a non-exclusive easement in favor of the Country Club for overspray of water from the irrigation system serving the Country Club. Under no circumstances shall the Declarant, the Association or the owner(s) of the Country Club be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner(s) of the Country Club, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from the golf course.

(e) The Declarant hereby reserves for itself, its successors and assigns, and the owner(s) of the Country Club, an easement to draw water from bodies of water within the Common Area for purposes of irrigation of the Country Club and for access to and the right to enter upon the Common Area for installation and maintenance of any irrigation systems.

(f) All Owners acknowledge that Units may be located adjacent to or near the golf course at the Country Club and that Country Club .

(g) Related activities, including without limitation, golf tournaments, concerts, or other events may be held at the Country Club. None of these Country Club-related activities shall be deemed to be nuisances or noxious or offensive activities. Each Owner shall assume all risks associated with the location of their Unit, including, but not limited to, the risk of property damage, personal injury or death arising from errant golf balls and other actions incidental to the use and operation of the golf course and shall release, indemnify, defend and hold harmless the Declarant, its affiliates and the Owner and operator of the Country Club from any liability, claims or expenses, including attorney's fees, arising from any property damage, personal injury or death suffered by the Owner or the Owner's family members, guests or invitees as a result of any such activity.



13.6. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.7. Public Access Trail System. In connection with the development of the Properties, Declarant may construct a trail system on the Properties or on adjacent property owned by the Declarant or the Country Club property. The Association shall be responsible for maintaining the trail system. There shall be reciprocal appurtenant easements for use and enjoyment of the trail system between the Association, the Owners, the Country Club owner and its guests and members. The use and enjoyment of the trail system shall be subject to such reasonable rules and regulations governing use which may be imposed by the Declarant, the Association, or the owner(s) of the Country Club property. The public may be allowed use of the trail system subject to any such rules and regulations and subject to the right of the owner of the property upon which the trail system is located to impose reasonable user fees.

#### ARTICLE XIV MORTGAGEE PROVISIONS

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder", will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

14.2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.4. Failure of Mortgagee. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

14.5. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the mortgage on any Unit: annexation of additional property, dedication, conveyance or mortgaging of Common Area, or material amendment of this Declaration.

## ARTICLE XV DECLARANT'S RIGHTS

Any or all rights and obligations of Declarant may be transferred to other Persons, but the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws and shall not be effective unless signed by Declarant and duly recorded in the Public Records. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property described in Exhibit "A", in any manner whatsoever.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and sales of Units by Declarant and Builders shall continue, it shall be expressly permissible for the Declarant and Builders authorized by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, and sales offices. The Declarant and Builder(s) authorized by Declarant shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned or leased by the Declarant or a Builder and any clubhouse or community center which may be owned by the Declarant or the Association, as models and sales offices,



respectively.

So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Properties then owned by Declarant as described in Exhibit "A", without Declarant's written consent. Any attempted recordation without compliance herewith shall result in such instrument being void unless consent of Declarant is subsequently recorded in the public records. In the event these declarations are amended without the Declarant's consent, such declarations will not be applicable on said properties owned by Declarant until they are transferred, sold, assigned, or designated to a third party.

Each Owner, by accepting title to a Unit and becoming an Owner, acknowledges awareness that Eagle's Bluff is a development which will likely extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties or (b) changes in any conceptual or the land use plan for the Properties provided; however, such revision is or would be lawful, including, but not limited to, lawful by special use permit, variance or the like, and is not inconsistent with what is permitted by the Declaration, as amended from time to time. Each Owner acknowledges that no representations, warranties or guarantees are made or relied upon as to: (a) the design, construction, completion, development, use, benefits, or value of the Properties or (b) the number, types, sizes, prices or designs of any structures to be built on any part of the Properties. Notwithstanding anything to the contrary in this Article, the provisions of this Article shall be enforceable only to the extent not in violation of any applicable provision of law.

## ARTICLE XVI LIMITATIONS ON LIABILITY

16.1. Constituent Partners. Notwithstanding anything to the contrary in this Declaration, no present or future "Constituent Partner" in or agent of Declarant, nor any shareholder, officer, director, employee, trustee, beneficiary, or agent of any corporation or trust that is or becomes a Constituent Partner in Declarant, shall be personally liable, directly or indirectly, under or in connection with this Declaration, or any instrument or certificate otherwise executed in connection with this Declaration, or any amendments or modifications to any of the foregoing made at any time or times, heretofore or hereafter, and each of the Owners and their respective successors and assignees waives, and does hereby waive, any such personal liability of such Constituent Partner.

Neither the negative capital account of any Constituent Partner in Declarant, nor any obligation of any Constituent Partner in Declarant to restore a negative capital account, or to contribute capital to Declarant, or to any other Constituent Partner in Declarant, shall at any time be deemed to be the property or an asset of Declarant, or any such other Constituent Partner, and none of the Owners nor any of their respective successors or assignees shall have any right to

collect, enforce or proceed against or with respect to any such negative capital account or partner's obligation to restore or contribute.

Furthermore, each of the Owners and their respective successors and assignees releases the Declarant from, and does hereby waive, any obligations, debts, liabilities, claims, costs, expenses, damages, and losses, to the extent covered or reimbursed by insurance.

As used in this Article, a "Constituent Partner" in Declarant shall mean any direct partner in Declarant and any person or entity that is a partner in any partnership that, directly or indirectly through one or more other partnerships, is a partner in Declarant.

16.2. Builder Performance. Neither Declarant, nor any "Affiliate" of Declarant, as hereinafter defined, are a co-venturer, partner, employer, stockholder, or affiliate of any kind of or with any Builder, nor is any Builder an agent of Declarant or an Affiliate of Declarant. Therefore, Declarant and Affiliates of Declarant shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale of a Unit or the construction of a structure on a Unit or otherwise. Neither Declarant nor any Affiliates of Declarant has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise.

Each Owner acknowledges and agrees that neither Declarant nor any Affiliate of Declarant share any liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of Declarant or any Affiliate of Declarant or any salesperson. "Affiliate", for purposes of this Article, means a partner, director, subsidiary, shareholder, officer, employee, agent, co-venturer, executor, personal representative, trustee, attorney, or a person or entity which (either directly or indirectly through one or more intermediaries), controls, is in common control with or is controlled by, another person or entity, and any person or entity that is a director, trustee, officer, employee, agent, partner, shareholder, subsidiary or attorney of any of the foregoing. For the purposes of this definition, the term "control" means (a) legal or beneficial ownership of (10%) or more of the voting interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

16.3. Excavation. All Owners are hereby placed on notice that Declarant, any Affiliate of Declarant, and/or its agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Properties. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, easement or other interest, and by using any portion of the Properties, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other



persons under their control or direction to enter upon, regardless of whether such entry is trespass or otherwise, any property within or in proximity to any portion of the Properties where such activities are being conducted, even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours, (c) Declarant, any Affiliate of Declarant and all of their agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses, damages, compensatory, consequential, punitive or otherwise, injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing.

16.4. Health, Safety, and Welfare. No provision of the Declaration, the Bylaws, or the Articles of Incorporation shall be interpreted as a representation or duty of the Declarant or the Association to provide for, protect or further the health, safety and welfare of the Owners.

## ARTICLE XVII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article, collectively, "Bound Parties", agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances, or disputes between such Bound Party and any other Bound Party involving, arising out of or relating to (a) the use, sale, purchase, construction, improvement, maintenance, operation or marketing of the Properties, (b) the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles, (c) the administration, operation, management, use or maintenance of the Association and its assets, or (d) the alleged negligent design, maintenance, development, improvement, construction or operation by Declarant of any portion of the Properties (collectively, "Claims"), except for those Exempt Claims described in Section 17.2, shall be resolved using the procedures set forth in Section 17.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

17.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 17.3:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order, or equivalent emergency equitable relief, and such other ancillary relief as the court may deem

necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions);

(c) Any suit between Owners that does not include Declarant as a party thereto, if such suit asserts a Claim which would constitute a cause of action under the laws of the State of Texas or the United States but does not or would not include or involve any claim, right, privilege, membership, or defense based on or arising from the Declaration, Bylaws, Articles or rules of the Association;

(d) Any suit in which all indispensable parties are not Bound Parties;

(e) Any suit which all the parties thereto agree to consider as an Exempt Claim;

(f) A construction defects claim which involves damages in excess of \$50,000.00 per Unit; and

(g) The submission to a court of any settlement as a settlement affecting a class if such a class settlement is reasonably necessary to resolve a dispute which would otherwise not be an Exempt Claim.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 17.3 shall require the approval of the Association.

17.3. Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

2. The basis of the Claim (i.e., the laws, regulations, contract, provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

3. What Claimant wants Respondent to do or not do to resolve the Claim; and

4. That Claimant will meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.



1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice, or within such other period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent dispute resolution center, or such other independent agency providing similar services upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within fifteen (15) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within thirty (30) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and

discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings. Each Party shall bear its own costs incurred prior to and during the

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Texas. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas.

#### 17.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 17.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 17.3(c).

(b) Each Party shall bear its own costs, including the fees of its attorney or other representative, incurred after the Termination of Mediation under Section 17.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs") except as otherwise provided in subsection 17.4(c).

(c) Claimant shall prepay to the arbitration panel the sum of \$1,000.00 to be applied toward payment of any Post-Mediation Costs of the Parties, and, in addition, shall advance all arbitration costs until an Award is made. If a Respondent brings a Claim (i.e., a counterclaim) against a Claimant, the arbitration panel may, upon request, order such Respondent to advance a portion of the arbitration costs. If an Award is equal to or more favorable to a Claimant than such Claimant's Settlement Demand, the arbitration panel may, in its discretion, add all or a portion of such Claimant's Post-Mediation Costs to the Award, and allocate such Costs to the Respondents in such proportions as the arbitration panel deems appropriate. If an Award against a Respondent is equal to or less favorable to Claimant than such Respondent's Settlement Offer to that Claimant, the arbitration panel may, in its discretion, also award to such Respondent its Post-Mediation Costs, and allocate such Post-Mediation Costs to the Claimants in such proportions as the arbitration panel deems appropriate.

17.5. Enforcement of Resolution. After resolution of any Claim through negotiation, mediation or arbitration, in accordance with Section 17.3, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party, or if more than one non-complying Party, from all such Parties pro rata, all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.



## ARTICLE XVIII GENERAL PROVISIONS

### 18.1. Duration.

(a) Unless terminated as provided in Section 18.1(b), this Declaration shall have perpetual duration. If Texas law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Texas law, in which case such law shall control, this Declaration may not be terminated within twenty (20) years of the date of recording without the consent of all Unit Owners and unanimous approval of the Board of Directors. Thereafter, it may be terminated only by an instrument signed by Owners of at least 67% of the total Units within the Properties and by the Board of Directors, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### 18.2. Amendment.

(a) Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 67% of the votes in attendance at a properly noticed meeting called for the purpose of amendment. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) Effective Date and Validity. To be effective, any amendment must be recorded in the Public Records.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

### 18.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or

any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

18.4. Litigation. No judicial, arbitration or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a majority of the Board of Directors. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

18.5. Intentionally Deleted.

18.6. Use of the Words "Eagle's Bluff". No Person shall use the words "Eagle's Bluff" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners or Builders may use the terms "Eagle's Bluff" in printed or promotional matter where such term is used solely to specify that particular property is located within Eagle's Bluff. The Association also shall be entitled to use the words "Eagle's Bluff" in its name. Any use of the registered name "Eagle's Bluff" shall be in a manner in which the proprietary rights to such name are protected.

18.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

18.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to their Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

18.9. Prohibition Against Discrimination. Discrimination by race, color, religion, age, sex or national origin in the administration, interpretation, application, and enforcement of this the Bylaws, the Association rules or the Articles shall be prohibited.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 17 day of ~~May~~ <sup>AUGUST</sup> 2014.

8-7-14  
Date

  
Declarant

Pars at the Lake, L.L.C. f/k/a Grace Creek Development,  
L.P., successor to Lake Palestine Associates, L.P.



STATE OF TEXAS           §  
                                  §  
COUNTY OF SMITH       §

BEFORE ME, the undersigned authority, on the 7 day of August, 2014, personally appeared, David Carls, to me known to be the President of Pars at the Lake, L.L.C. f/k/a Grace Creek Development, L.P., successor to Lake Palestine Associates, L.P., and he/she acknowledged before me the he/she executed the same for the purposes therein expressed.



Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

Filed for Record in:  
Official Public Records  
Cherokee County

On: Aug 11, 2014 at 09:52A

As a  
Recording

Document Number: 00637130

By,  
Marion Loftin,  
Deputy

STATE OF TEXAS           COUNTY OF CHEROKEE

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the named records of:

Cherokee County  
as stamped hereon by me.

Aug 11, 2014

HONORABLE Laverne Lusk, COUNTY CLERK  
Cherokee County